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ABSTRACT

This booklet provides materials designed to advance the employment of individuals with disabilities. An introduction gives brief vignettes of activities that have been carried out around the country to foster employment, including corporate training programs, public relations efforts, special conferences, and awards. Publications, fact sheets, and Internet resources are listed. The next section summarizes the results of three 1995 surveys showing support by industry for the Americans with Disabilities Act (ADA) and employment of persons with disabilities. Data on the costs and benefits of job accommodations are summarized, showing an average return of $28.69 in benefits for each dollar invested in making an accommodation. Typical accommodation problems and their solutions are listed. The following section corrects a number of common misconceptions about the ADA, such as that ADA suits are flooding the courts. The booklet also addresses the relationship between diversity and disability, major workplace laws and general guidelines for compliance, insurance and benefits issues, an employment checklist of practical "do's and don'ts," and guidelines on pre-employment inquiries and physical examinations. (DB)

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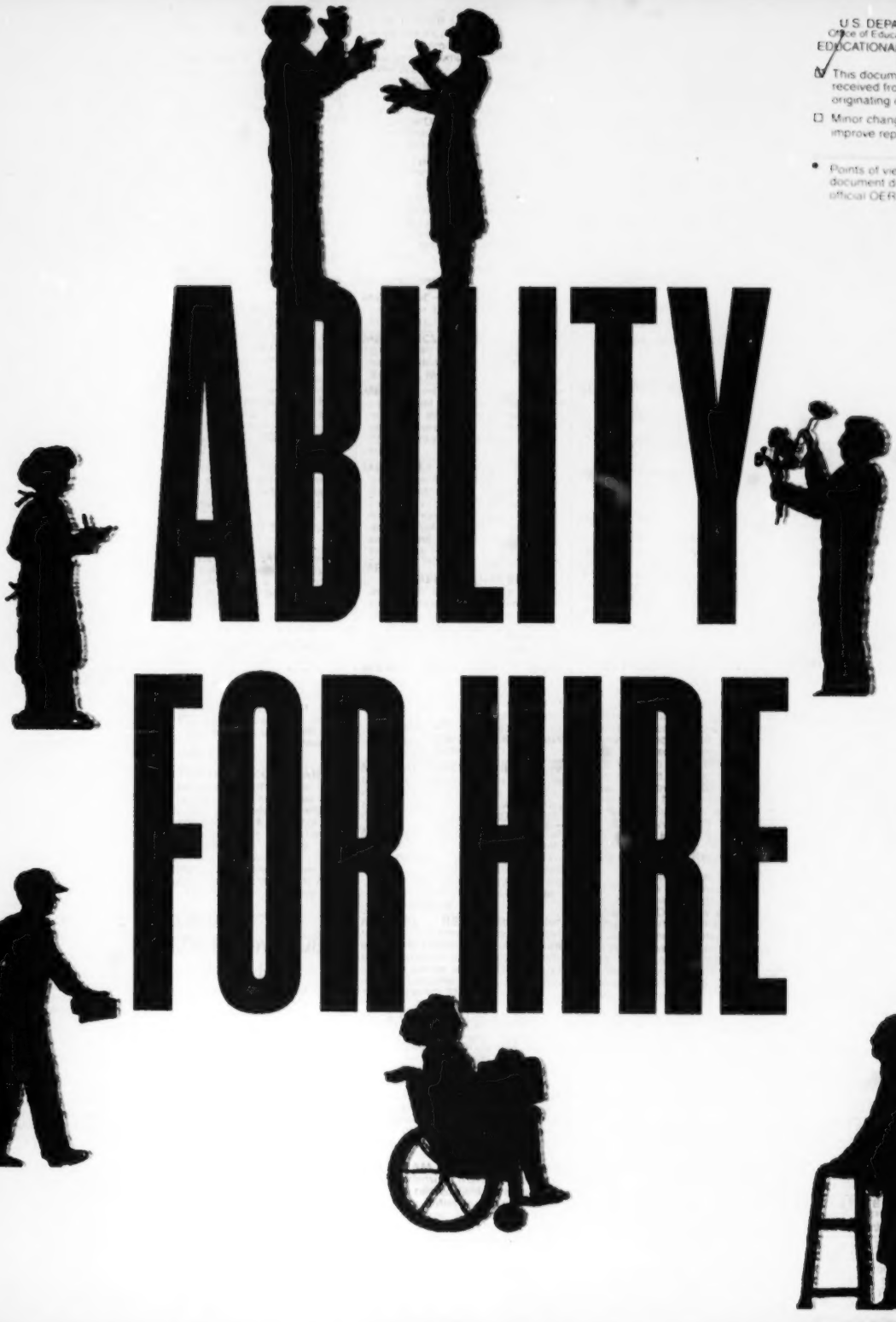

ABILITY FOR HIRE

EC 304947

PRESIDENT'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

EDUCATIONAL KIT 1996

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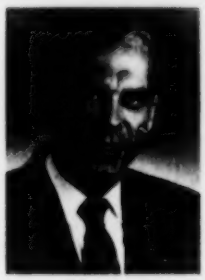
ABILITY
FOR HIRE

A Message From Chairman Tony Coelho



"Ability for Hire": The theme we have selected for this year's awareness and educational program is more than a mere slogan; it is a statement of fact, an assertion of pride, and an advertisement to industry. It is a bold announcement that America's 49 million people with disabilities have boundless talents to contribute to our economy, vastly diversified skills to be utilized, and abundant energy for whatever work needs to be done.

We need to communicate to corporate executives, business leaders, entrepreneurs, government officials, and others with hiring authority something we all know to be true: The major challenges to productive employment of qualified people with disabilities are attitudinal barriers and narrow-minded assumptions about what people can and can not do.

What people with disabilities can do is be productive. There are people who are blind working as machinists. There are people who are amputees working on shipping platforms, loading and unloading cargo from trucks. There are sports announcers who cannot see, teachers who are deaf, business executives who are paraplegic, and employees with mental retardation packaging goods for catalogue companies and other major shippers.

They are working on Main Street and on Wall Street, in finance and high fashion, in the suburbs and in cities across the country. In high-profile jobs on network television and in routine, everyday jobs in thousands of ordinary workplace settings, people with disabilities are proving day after day that they have the talent, skill, and ability to do the job.

Whatever the challenge, people with disabilities have demonstrated an indomitable attitude and a will to meet the challenge. They have excelled at every level of industry and government. In the darkest days of World War II, the American people looked for inspiration to President Franklin Delano Roosevelt, a man with a disability.

Yet, 50 years later for far too many of us, the door to employment opportunity remains closed. While the ADA now forbids open discrimination against people with disabilities, prejudice has not disappeared from the marketplace. Prohibition of overt discrimination has not eliminated a more subtle level of bias. Too many qualified applicants still encounter doubt, distrust and discouragement. In too many offices, factories and retail shops, there's a hidden message in help-wanted signs that says, "No one with disabilities need apply."

Laws can require compliance by business and public accommodations, but legislation by itself cannot enforce fairness. We can build ramps and widen doorways, but we won't get the access we need and gain full admittance to the job market until we eliminate doubts about our ability and eliminate mindless discrimination in the workplace. The ramps we need to build are ramps to the mind.

Recent surveys tell us things are getting better. But not fast enough to make a difference to millions of unemployed Americans with disabilities. Signs of incremental progress offer encouragement, but provide little comfort to individuals who are locked out of jobs. We have succeeded in making overt discrimination illegal, but we have a long way to go before people with disabilities are offered equal opportunities. Equality based on ability remains an ideal rather than a reality.

We can change that. Your efforts to develop awareness and educate the public can help close the gap and bring reality into line with our expectations of liberty and justice for all.

Tony Coelho

INTRODUCTION

The President's Committee on Employment of People with Disabilities new Educational Kit has been fashioned to provide you with materials that can be used year round to advance the employment of people with disabilities. Programs and activities to promote and foster positive employment outcomes for individuals with disabilities should be conducted throughout the year. These materials are designed to be used for programs celebrating the anniversary of ADA in July and National Disability Employment Awareness Month (NDEAM)in October. These are only two of the many natural tie-ins that can be part of your year long campaign. Be creative! Plan activities and programs for:

JANUARY—MARTIN LUTHER KING JR. DAY
JULY—ADA ANNIVERSARY
SEPTEMBER—LABOR DAY
OCTOBER—NATIONAL DISABILITY EMPLOYMENT AWARENESS MONTH
NOVEMBER —VETERANS DAY

The theme for this year's educational program is **"ABILITY FOR HIRE."** American businesses and industries are at a crossroad. If they are to continue to hold their position as world leaders in the emerging global economy, they should be hiring employees with diversified skills and talents. These employment needs can be filled by the most underutilized labor pool in this country—persons with disabilities. American business must take up the challenge. Persons with disabilities can and do work on Main Street and on Wall Street. They are trained to be accountants, bricklayers, chefs, dishwashers, radio announcers and so much more. Whatever the employment setting, the skills and talents of persons with disabilities can be utilized. Their abilities are for hire—let's use them and keep America strong.

To help your creative juices get started, here are samples of activities that have been carried out around the country to foster employment for individuals with disabilities.

- IBM, AT&T, Bank of America and Honeywell used the fact sheets for international and national company training programs.

- The Montgomery, AL Area Committee on Employment of People with Disabilities printed placemats using the theme and distributed them to local restaurants.

- The Missouri Division of Employment Security's ADA Coordinator in Lexington conducted an extensive media campaign. He placed public service announcements on radio stations and a news story in the local newspaper (with comments from the mayor).

- Projects with Industry, the Clarion Hotel and the Oklahoma Governor's Committee on Employment of the Handicapped co-Sponsored a job fair. The Michigan Employment Security Commissions in Saginaw County, Bay County and Midland County joined together to hold a job fair in which more than 75 employers participated.

- The U.S. Department of Labor, Washington, DC, aired news stories and information pieces on its in-house television system.

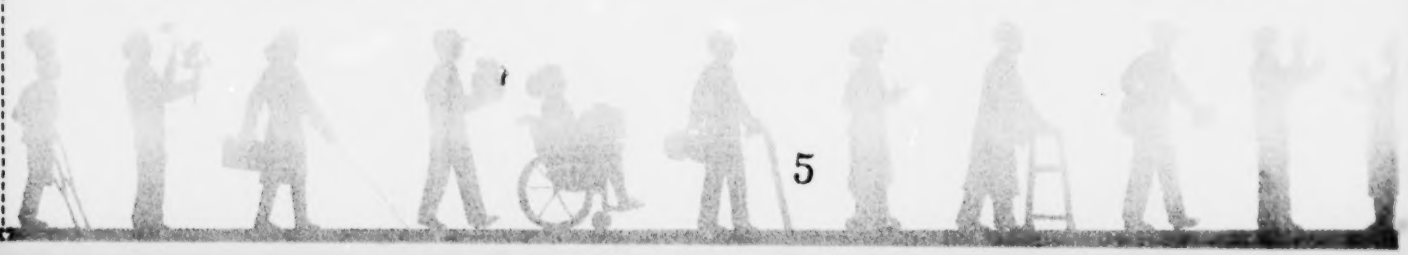
- The Puerto Rico Governor's Committee on Employment of People with Disabilities participated in the Fifth Annual Conference on the Rights of Persons with Disabilities. During the conference the Governor's Committee signed a Cooperative Agreement with the Society for the Management of Human Resources Managers (SMHR) in an effort to increase disability employment programs between the public and private sectors.

- The Texas Governor's Committee on Employment of People with Disabilities has instituted the Barbara Jordan Awards to recognize outstanding contributions by Texas media to eliminate attitudinal, social and physical barriers and encourage accurate and progressive portrayals of people with disabilities.

- The Agency for International Development, Washington, DC conducted a seminar for all personnel on how to successfully employ and accommodate persons with disabilities.

- The Wisconsin ADA Partnership, the Wisconsin Manufacturers, and the Wisconsin Governor's Committee for People with Disabilities jointly sponsored a media forum.

- The Savannah field office of the Georgia Department of Labor joined forces with the Georgia Division of Vocational Rehabilitation Services to conduct a customized Job Search ➥



Workshop for clients referred by the Division of Vocational Rehabilitation Services.

- The Minnesota Department of Employee Relations ADA Coordinator and the Department of Veterans Affairs used material from the kit regarding employment of people with disabilities to help educate their respective staffs via e-mail.

- The District of Columbia Mayor's Committee on Persons with Disabilities conducted a legislative symposium that focused on special education, the ADA, Social Security entitlement, and vocational rehabilitation.

REMEMBER: This is only a starting point. Let your ingenuity be your guide.

ADDITIONAL MATERIALS: Listed below are materials you may order to assist you with your year round activities to advance the employment of persons with disabilities.

President's Committee on Employment of People with Disabilities
1331 F Street, NW
Washington, DC 20004-1107
(202) 376-6200 (VOICE), (202) 376-6205 (TTD/TTY),
(202) 376-6859 (FAX)

PUBLICATIONS:

- ADA and The Health Professional
- Are You Ready for ADA?
- Employer Incentives When Hiring People with Disabilities
- Ready, Willing and Available
- Worklife: ADA Commemorative Issue, Fall 1990
- ADA Focus Brochures: Key Provisions, Employment, Transportation, Disabled Veterans, Public Accommodations, Telecommunications

FACT SHEETS:

- Communicating With and About People with Disabilities (1995)
- Supported Employment (1995)
- Worker's Compensation: Developing Company Policies (1995)
- Key Facts (1995)
- Dispelling Myths about People with Disabilities (1995)
- Job Accommodations—Situations and Solutions (1995)
- Resources You Can Use (1995)
- American's with Disabilities Act, Public Law 101-336 (1992)
- Glossary of Commonly Used Terms (1994)
- Accommodations Get the Job Done (1994)
- Employer Profiles (1995, 1994)
- Employment Rights: Who Has Them and Who Enforces Them (1994)
- Job Analysis- An Important Employment Tool (1994)
- Myths and Facts About People with Disabilities (1994)
- Statistical Report: The Status of People with Disabilities (1994)
- Job Accommodations Come in Groups of One (1993)
- Recruitment (1993)
- Interviewing Tips for the Job Applicant (1993)
- Guidelines for Conducting a Job Interview (1993)

President's Committee Job Accommodation Network (JAN)
(800) 526-7234 (VOICE/TTD/TTY). A Service of the President's Committee.

PUBLICATIONS:

- Cost of Job Accommodations
- ADA Evaluation Checklist and Guide

INTERNET:

- A number of the above publications are available on the Internet. To access these, the address is http://janweb.icdi.wvu.edu/pcepd/pcpubs.htm

What Does Business Really Think About The ADA?

Despite statements in the media and elsewhere that business does not support the Americans with Disabilities Act (ADA), several recent surveys challenge that perception. In fact, based on these surveys, there is a great deal of support for ADA in critical American industries. Following is what has been learned regarding industries support of ADA and employment of persons with disabilities.

Global Strategy Group, Inc., Survey—October 1995

The findings of a nationwide random sample of 300 CEOs and human resource managers in Fortune 5000 companies related to manufacturing, technology and communications are outlined below.

Key general findings:

- 73% of the top industries across the United States are hiring people with disabilities.
- 87% of companies with more than 200 employees are hiring people with disabilities.
- 75% of companies employing 51-200 people are hiring people with disabilities.
- 58% of companies employing fewer than 50 people are hiring people with disabilities.
- 54% of the people who make hiring decisions for these companies say that the ADA has had a positive impact on their corporations.

Key findings by regions of the country:

- 59% of the top industries surveyed in the East found the ADA to have a positive impact on their corporations.
- 51% of the top industries surveyed in the South found the ADA to have a positive impact on their companies.
- 47% of top industries surveyed in the Midwest/West found the ADA to have a positive impact on their industries.

Key findings by industry:

- 66% of executives in the technology industry believe the ADA has had a positive impact on their corporations.
- 76% of technology-based industries are hiring people with disabilities.
- 52% of executives in the communications industry believe the ADA has had a positive impact on their corporations.
- 69% of companies in the communications industry are hiring people with disabilities.
- 46% of human resource managers in manufacturing companies think the ADA has made a positive impact on companies across the United States.
- 74% of the companies in the manufacturing industry are hiring people with disabilities.

(Survey conducted for President's Committee on Employment of People with Disabilities)

Mason-Dixon Poll—January 1995

The results of a poll of 309 randomly selected Florida Chamber of Commerce members (owners, CEOs, or top managers) with at least 15 full-time employees is outlined below.

- 94% of executives said their businesses were very or somewhat familiar with the ADA.
- 38% of the businesses reported hiring at least one person with a disability over the last three years.
- 72% of businesses that reported hiring persons with disabilities said that the employment of people with disabilities has had a favorable effect on their business.
- 87% of businesses that reported hiring persons with disabilities said that, in view of their experience, they would encourage other employers to hire persons with disabilities.

(Survey funded by the Florida Chamber of Commerce Foundation's Disability Awareness Project)

Louis Harris And Associates, Inc. Survey—July 1995

The findings of a nationwide survey of 404 senior corporate executives regarding the acceptance of the ADA by America's corporate employers are outlined below.

- 70% of the executives surveyed support the ADA and do not favor weakening the law in any way.
- 8% said that the ADA should be strengthened.
- 64% of the companies are hiring people with disabilities.
- 89% of the employers and their employees supported policies to increase the number of people with disabilities in their companies.
- 75% of managers said they are likely to make greater efforts to hire people with disabilities in the next three years.

(Survey conducted for The National Organization on Disability)

University Of Michigan-Dearborn Study—1994

The findings of a nationwide survey of 408 human resource management professionals and general managers in companies ranging in size from 15 to 300,000+ employees, with a median number of 843 employees is outlined below.

- 45% of the human resource managers said hiring people with disabilities results in productivity gains for their companies.
- 63% of those companies rejected the idea that the costs of the ADA will adversely affect the ability of their companies to compete
- 63% of the resource managers said their companies rejected the idea that the ADA will result in higher costs with few benefits to the firm.

(Study conducted by University of Michigan-Dearborn, School of Management and School of Education)

July 1996
President's Committee on Employment of People with Disabilities
1331 F Street, NW, Washington, DC 20004-1107

Cost And Benefits Of Accommodations

The President's Committee's Job Accommodation Network (JAN), a toll-free service, has been advising businesses and individuals about job accommodations since 1984. With the passage of the Americans with Disabilities Act (ADA) in 1990, JAN expanded to include information about the ADA. During the fiscal year that began October 1, 1994 and ended September 30, 1995, JAN received more than 80,000 calls from individuals and businesses in 50 states, the District of Columbia and Puerto Rico. Following is information related to these calls for advice, as well as examples of accommodations that were implemented as a result of the advice.

Major Issues of Concern	**Percentage of Cases**
Understanding the ADA	34
Impact of Accommodation	13
Conflict between Employer/Employee	13
Cost of Accommodation	3
Concerns related to Federal and State Agencies	6
Other	31

Top Five States Using JAN	**Number of Calls**
California	10,079
Texas	4,776
Virginia	4,547
Pennsylvania	4,196
New York	3,921

Accommodation Costs Reported by Businesses That Used JAN	**Percentage**
No cost	19%
Between $1 and $50	50%
Between $501 and $1,000	12%
Between $1,001 and $2,000	7%
Between $2,001 and $5,000	9%
Greater than $5,000	3%

Company Savings Because Accommodations Were Made	**Percentage**
Value unknown	4%
Between $1 and $5,000	34%
Between $5,001 and $10,000	16%
Between $10,001 and $20,000	19%
Between $20,001 and $100,000	25%
Greater than $100,000	2%

Companies reported an average return of **$28.69** in benefits for every dollar invested in making an accommodation.

Accommodations Implemented by JAN Callers

Situation: A production worker with mental retardation, who has limited fine motor dexterity, must use tweezers and a magnifying glass to perform the job. The worker had difficulty holding the tweezers.

Solution: Giant tweezers were purchased. Cost: $5.

Situation: A teacher with bipolar disorder, who works in a home-based instruction program, experienced reduced concentration, short term memory, and task sequencing problems.

Solution: At one of their weekly meetings the employee and the supervisor jointly developed a check list. This check list showed both the week's work and the following week's activities. Forms were adapted so that they would be easy to complete, and structured steps were developed so that paper work could be completed at the end of each teaching session. An unintended bonus to the company was the value of the weekly check-off forms in training new staff. Cost: $0.

Situation: A garage mechanic with epilepsy was unable to drive vehicles.

Solution: The employer negotiated with the employee's union and reached an agreement that any qualified employee, regardless of job held, could drive the vehicles to the mechanic's work station. Cost: $0.

Situation: An individual with a neck injury, who worked in a lab, had difficulty bending his neck to use the microscope.

Solution: A periscope was attached to the microscope. Cost: $2,400.

Situation: A catalog salesperson, who had a spinal cord injury, had problems using the catalog due to difficulty with finger dexterity.

Solution: The employer purchased a motorized catalog rack, controlled by a single switch via the mouthstick, and provided an angled computer keyboard stand for better accessibility. Cost: $1,500.

Situation: A field geologist who was deaf and worked alone in remote areas was unable to use two-way radio communication to report his findings.

Solution: Text telephone technology was used to allow the geologist to communicate using a cellular telephone. Cost: $400 plus monthly service fee for the phone.

Situation: A saw operator with a learning disability had difficulty measuring to the fraction of an inch.

Solution: The employee was provided with a wallet-sized card on which the fractions were listed on an enlarged picture of an inch. This allowed the employee to compare the card with the location on the ruler to identify the correct fraction. Cost: $5.

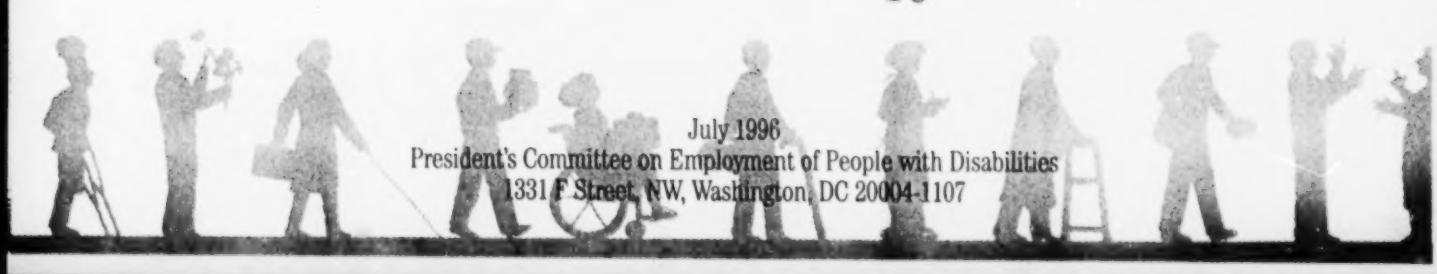
Situation: An accountant with HIV was experiencing sensitivity to fluorescent light. As a result, she was not able to see her computer screen or written materials clearly.

Solution: The employer lowered the wattage in overhead lights, provided task lighting and a computer screen glare guard. Cost: $80.

Situation: A custodian with low vision was having difficulty seeing the carpeted area he was vacuuming.

Solution: A fluorescent lighting system was mounted on his industrial vacuum cleaner. Cost: $240

For additional information contact:
President's Committee Job Accommodation Network
(800) 526-7236 (Voice/TTD/TTY)
jan@jan.icdi.wvu.edu(e-mail)



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Dispelling Myths About The Americans With Disabilities Act

The Americans with Disabilities Act (ADA) is a civil rights law that is opening doors to the mainstream of life for the 49 million Americans with disabilities. There are many misconceptions surrounding the ADA. Listed below are the most commonly heard myths and the facts.

Assumption: ADA suits are flooding the courts.

Fact: The ADA has resulted in a surprisingly small number of lawsuits—only about 650 nationwide in five years. That is tiny compared to 6 million businesses, 666,000 public and private employers, and 80,000 units of state and local governments that must comply.

Assumption: The ADA's definition of disability is broad and vague and has resulted in "bizarre and arcane" discrimination claims that are wasting the time of the EEOC and the courts.

Fact: As with any new statute, there is a period during which employers and employees learn about their rights and obligations under the law. While individuals have the right to file charges, not all charges are meritorious. The job of the EEOC investigator is to separate the wheat from the chaff. Further, the flexibility provided by the ADA definition of "disability" means that there will be individuals who bring claims for conditions that do not satisfy the statutory standards, and the claim will be dismissed.

Assumption: The ADA forces business and government to spend lots of money hiring unqualified people with disabilities.

Fact: To be protected by the ADA an individual must be qualified. No unqualified job applicant or employee with a disability can claim employment discrimination under the ADA. Employees or job applicants must meet all the necessary requirements of the job and perform the essential functions of the job with or without reasonable accommodation. No accommodation must be provided if it would result in an undue hardship on the employer.

Assumption: The ADA, along with other laws such as the FMLA and Workers' Compensation, are squeezing out small businesses that cannot afford to hire human resource specialists to advise them regarding the complexities of these laws.

Fact: Truly small businesses, those with fewer than 15 employees, are not covered by the ADA. (The FMLA only applies to employers with 50 or more employees.) For employers who are covered, the ADA provides an undue hardship defense for reasonable accommodations that are unduly costly or burdensome. Smaller employers can more easily establish undue hardship because they have fewer resources.

Assumption: The ADA is being misused by people alleging mental and neurological impairments.

Fact: The ADA covers individuals with physical or mental impairments that substantially limit major life activities because individuals with such impairments have traditionally been subjected to pervasive employment discrimination. Just as the ADA excludes people with temporary physical problems, so does it exclude people with mild or short-term mental health problems. Neurological impairments are conditions or diseases involving the nervous system, including the brain, spinal cord, ganglia, nerves, and nerve centers. ADA charges indicate that there is significant discrimination against persons with neurological impairments. Psychiatric impairments involve a biological, social, or psychological dysfunction. Individuals with psychiatric disabilities have traditionally been subjected to discrimination, not because they are unable to successfully perform job duties, but because of myths, fears, and stereotypes associated with such impairments.

Assumption: The ADA is rigid and requires businesses to spend lots of money to make their existing facilities accessible.

Fact: The ADA is based on common sense. The law recognizes that altering existing structures is more costly than making new construction accessible. The law only requires that public accommodations (e.g., stores, banks, hotels, and restaurants) remove architectural barriers in existing facilities when it is "readily achievable" (i.e., it can be done "without much difficulty or expense"). Inexpensive, easy steps that can be taken include ramping one step, installing a bathroom grab bar, lowering a paper towel dispenser, rearranging furniture, installing offset hinges to widen a doorway, or painting new lines to create an accessible parking space.

Assumption: ADA requires that sign language interpreters be used in all situations involving persons who are deaf.

Fact: The ADA only requires that effective communication not exclude people with disabilities—which in many situations means providing written materials or exchanging notes. The law does not require any measure that would cause an undue financial or administrative hardship.

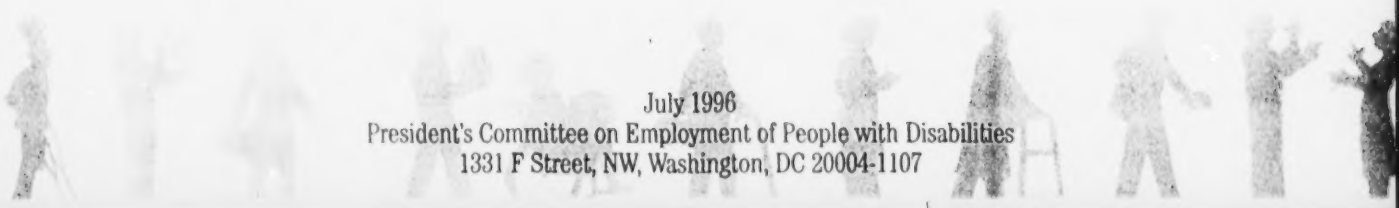
Assumption: The ADA requires extensive renovations of all state and local government buildings to make them accessible.

Fact: The ADA requires all government programs, not all government buildings, to be accessible. "Program accessibility" is a very flexible requirement and does not require a local government to do anything that would result in an undue financial or administrative burden. Local governments have been subject to this requirement for many years under Title 5 of the Rehabilitation Act of 1973. Not every building, nor each part of every building needs to be accessible. Structural modifications are required only when there is no alterative available for providing program access. Let's say a town library has an inaccessible second floor. No elevator is needed if it provides "program accessibility" for persons using wheelchairs by having staff retrieve books.

Assumption: Everyone claims to be covered under the ADA.

Fact: To be protected under the law, a person must have an impairment that substantially limits a major life activity, must have a record of such an impairment, or must be regarded as having such an impairment. While people have the right to file charges, not all charges are meritorious. EEOC investigators are instructed to analyze whether a charging party has an ADA-protected disability. If an individual does not have a substantially limiting impairment (and does not allege "record of" or "regarded as" discrimination), the complaint is dismissed.

The information in this fact sheet came from the following sources: The U.S. Equal Employment Opportunity Commission and the U.S. Justice Department.



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Diversity And Disabilities

Diversity Includes Disability

Workforce diversity has become a major management strategy for many employers in the 1990's because it makes good business sense. A diverse workforce gives companies a competitive advantage by enabling them to better meet the needs of their customers, successfully compete in the global marketplace, and hire from an expanded labor pool.

Managing diversity involves the creation of an open, supportive, and responsive organization in which diversity is acknowledged and valued. Diversity is defined as all of the ways in which we differ. Some of these dimensions are race, gender, age, language, physical characteristics, disability, religion, sexual orientation, and other differences irrelevant to one's capacity to perform a job.

Why Do I Need To Know About Diversity And People With Disabilities?

According to recent studies, America's workforce is changing and rapidly growing more diverse. Over the next few decades, the largest percentage of new growth will be composed of women, ethnic minorities, and immigrants. The number of employees with disabilities will also increase. The current generation of Americans with disabilities is well prepared to be tapped for the job market and able to provide an added solution for the labor shortages facing American business.

People with disabilities are the nation's largest minority, and the only one that any person can join at any time. If you do not currently have a disability, you have about a 20% chance of becoming disabled at some point during your work life. People with disabilities cross all racial, gender, educational, socioeconomic, and organizational lines.

Companies that include people with disabilities in their diversity programs increase their competitive advantage. People with disabilities add to the variety of viewpoints needed to be successful and bring effective solutions to today's business challenges. The American economy is made stronger when all segments of the population are included in the workforce and in the customer base.

How Can My Company Support Diversity, Including Employees With Disabilities?

1. Educate Yourself

   - Before moving ahead, study the issue.
   - Learn more about people with disabilities. A good way to start is to contact disability-related organizations for information.
   - Contact your local Governor's Committee on Employment of People with Disabilities, Centers for Independent Living, State/Local Vocational Rehabilitation Agencies, and organizations and agencies that serve or represent specific disabilities. Many of these organizations want to assist the business sector, and some provide free training and literature.
   - Talk to people with disabilities in your company and ask for their ideas and input.

2. Develop A Plan

   - Establish a system for educating and sensitizing all levels of your workforce on the value of hiring people with disabilities.
   - If you have a diversity training program, make sure that employees with disabilities are included in this effort.

3. Consider The Following Action Items:

   Recruitment and Outreach

   - Even before positions open, seek out opportunities to develop relationships with organizations, agencies, and programs that represent or train people with disabilities.
   - Participate or increase participation in summer internships or similar programs to increase the flow of qualified individuals with disabilities in the "pipeline."
   - When a position is approved for external hire, seek out qualified professional organizations that represent and serve people with disabilities.

- When contracting with a retainer or contingency search firm, develop the contract to include qualified people with disabilities in the search. The contract should outline the steps that will be implemented to locate qualified people with disabilities.

Development and Planning

- When task forces or other special committees are established, they should include people with disabilities.
- Monitor to ensure that internal developmental programs are available to employees with disabilities.
- Provide employees with disabilities candid and prompt feedback on their performance.
- When providing training or other off-site activities, make sure that they are accessible to employees with disabilities.

Compensation and Recognition

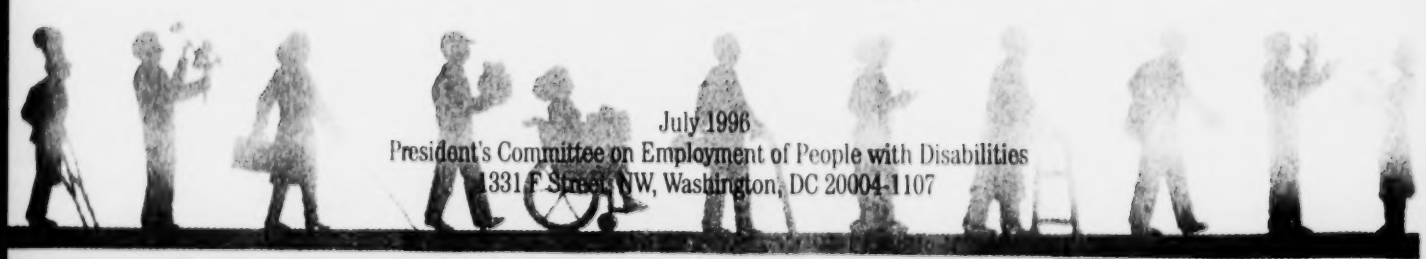
- Monitor bonuses and stock awards so that consistent job-related standards are applied.
- Monitor appraisal and total compensation systems so individuals with disabilities are treated without discrimination.

Where Can I Obtain Additional Information?

President's Committee on Employment of People with Disabilities
(202) 376-6200 (VOICE), (202) 376-6205 (TTY/TTD),
(202) 376-6219 (FAX)

President's Committee on Employment of People with Disabilities' Job Accommodation Network (JAN)
(800) 526-7234 (VOICE/TTY/TTD), (304) 293-5407 (FAX)
jan@jan.icdi.wvu.edu(e-mail)

Disability and Business Technical Assistance Centers (DBTACs)
(800) 949-4232 (VOICE/TTY/TTD), (703) 525-6835 (FAX)



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What You Should Know About Workplace Laws

What Are The Workplace Disability Laws?

During the last few years, employees have been exposed to many new laws, regulations, and acronyms. The Americans with Disabilities Act (ADA), Family and Medical Leave Act (FMLA), and Occupational Safety and Health Act (OSHA) impact upon the workplace. These are different laws enacted at different times with different purposes, and are not totally uniform. You should know about these.

The Americans with Disabilities Act (ADA)—The ADA is a federal anti-discrimination statute designed to remove barriers for individuals with disabilities. The ADA seeks to ensure equal access to employment opportunities regardless of whether someone has a disability. Title I prohibits discrimination against any qualified applicant or employee with a disability in all aspects of employment.

Family and Medical Leave Act (FMLA)—FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours during the previous 12 months, and if the company employs at least 50 people within a 75-mile radius. There are some areas of interaction between FMLA and ADA. These areas include medical conditions and reasonable accommodations.

A condition that qualifies as a serious health condition may or may not satisfy the ADA definition of disability. Temporary impairments of short duration constitute a serious health condition, but are not disabilities. Conversely, being a person with a disability (e.g., quadriplegia) does not necessarily constitute having a serious health condition.

The concept of reasonable accommodation under the ADA and FMLA are different. For example, an employee undergoing chemotherapy for cancer may request a modified work schedule as a reasonable accommodation under the ADA; it must be provided unless the employer can prove it would create an undue hardship. The same employee could request time off as FMLA leave. The employer must grant an eligible employee up to 12 weeks of unpaid FMLA. There is no undue-hardship exception.

Occupational Safety and Health Act (OSHA)—The OSHA Reform Act requires an employer to furnish a work environment that is free of recognized hazards causing or likely to cause death or serious injury, as well as to comply with government safety and health standards. There are some areas of interaction between OSHA and ADA. These areas include standards and reporting requirements. In complying with specific OSHA standards, employers may want to consider incorporating ADA reasonable accommodation concepts. For example, OSHA requires employees to label, in writing, certain toxic materials and give written materials explaining their potential dangers to employees. An ADA reasonable accommodation could be also using the universal symbol for poison, and providing verbal warnings of the potential danger of certain toxic materials.

Workers' Compensation Laws—Each state has its own workers' compensation laws and second injury fund. The employers' return-to-work policies and procedures for an employee who is injured or disabled must be consistent not only with state workers' compensation laws, but also with ADA, FMLA, and OSHA regulations. It is important to remember that the ADA does not distinguish between reasonable-accommodation requirements for employees with work-related injuries and illnesses as opposed to non work-related injuries and illnesses.

What Are Some Suggestions For Dealing With The Different Workplace Laws?

In a large company, these issues are often handled by the Human Resources, Legal, and Risk Management Departments. Following are some suggestions for small business owners:

1. **Keeping Informed** is the first step in understanding the current laws, regulations, benefits, and other employee-related information that may impact the workplace. This information is available from the State/Federal Departments of Labor, the EEOC, your attorney, accountant, trade associations, and/or insurance agent.

2. **Documentation and Recordkeeping** are the most important protective steps an employer can take. Document in writing all employee performance and problems.

3. **A Company Manual** outlining policies and procedures should be presented to every employee with a "sign off" sheet. There can be less of a chance of misinterpretation when the rules are spelled out on paper.

4. **A Written Job Description** is another essential tool for avoiding misunderstanding of expectations and ultimately discrimination suits. Job descriptions show that the employer has identified the essential job functions and given every applicant the same information and opportunity for the position. With precise explanations of duties and responsibilities, employees know what is expected of them. Employers have the guidelines needed to hire, supervise, evaluate, and promote with maximum effectiveness.

5. **A Corrective Action Plan** is the best way to handle problems. In the event of problems, several warnings may eliminate the need for drastic action. Warnings will help justify the corrective action if the warnings are not heeded. Tell the employee what is wrong, what needs to be done to remedy the problem, and what will happen if the problem is not resolved. Document by including a specific time frame for the employee to remedy the problem; confer with the employee regularly to evaluate progress.

6. **A Safety Management Program** is important in preventing workplace injuries. Studies show that safety and prevention programs, along with a carefully designed work environment, reduce accidents and time off due to sick days.

7. **Communication and Common Sense** should be underlying principles for dealing with employees. Open, honest, and ongoing communication will resolve many problems. The employer and employee working together can develop creative, flexible strategies to meet the goals of the laws and regulations. Use common sense.

8. **Use Outside Professionals** if you are unsure. There are many professionals who can provide human-resource management advice in areas of employee benefits, safety and risk management, governmental compliance, personnel research, employee communication, and labor relations.

Where Can I Obtain Additional Information?

President's Committee on Employment of People with Disabilities' Job Accommodation Network (JAN)
(800) 526-7234 (VOICE/TTY/TTD), (304) 293-5407 (FAX)
jan@jan.icdi.wvu.edu (e-mail)

Equal Employment Opportunity Commission
(800) 669-4000 (VOICE), (800) 669-6820 (TTY/TTD),
(513) 489-8692 (FAX)

Disability and Business Technical Assistance Centers (DBTACs)
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Insurance And Benefits

The Equal Employment Opportunity Commission implements those parts of the Americans with Disabilities Act that prohibit discrimination in employer-provided health insurance. An employer may not deny an individual with a disability equal access to insurance, or require such an individual to have terms and conditions of insurance different than those of employees without disabilities.

The ADA does not require employers to provide health insurance. However, if an employer chooses to offer health insurance to employees, the ADA requirements apply.

What Is The Interim Enforcement Guidance?

On June 8, 1993, the EEOC issued *Interim Enforcement Guidance on the Application of the ADA to Disability-Based Provisions of Employer-Provided Health Insurance*. This document identified four basic ADA requirements in the area of health insurance:

1. Disability-based insurance distinctions are permitted only if the employer-provided health insurance plan is bona fide, and if the distinctions are not being used as a subterfuge for purposes of evading the Act.
2. Decisions regarding employment of an individual may not be motivated by concerns about the impact of the individual's disability on the employer's health plan.
3. Employees with disabilities must be accorded equal access to whatever health insurance the employer provides to employees without disabilities.
4. An employer cannot make an employment decision about any person based on concerns about health-plan costs because of the disability of someone with whom that person has a relationship.

What Is a Disability-Based Distinction?

Health-related insurance distinctions based on disability may violate the ADA. A term or provision is "disability-based" if it singles out a particular disability (e.g., AIDS, schizophrenia), a discrete group of disabilities (e.g., cancer, kidney diseases), or disability in general (e.g., non-coverage of all conditions that substantially limit a major life activity).

May Employers Refuse To Hire If Their Insurance Premiums Would Increase?

An employer may not refuse to hire an otherwise qualified individual with a disability (or a nondisabled person who is associated with a disabled person) because the company's health insurance premium would increase.

What About Self-Insured Private Employers?

The ADA does not affect the pension and welfare benefit provisions of the Employment Retirement Income Security Act (ERISA). This means that the ADA has no impact on the exemption from state insurance laws that ERISA provides to private employers who offer bona fide self-insurance plans (ERISA does not cover public employers.)

A self-insured plan must be bona fide in that it exists, pays benefits, and its terms have been accurately communicated to covered employees. Self-insured plans must comply with the ADA.

What If An Employer Contracts For Insurance Benefits?

An employer will be liable for any discrimination resulting from a contract/agreement with an insurance company, health maintenance organization (HMO), third-party administrator (TPA), stop-loss carrier, or other organization that provides or administers a health insurance plan on behalf of employees.

Are Limitations In Coverage Allowed?

While an employer must provide people with disabilities equal access to the health insurance coverage provided to all employees, the employer may offer a policy that has limitations in coverage. Limitations in the number of treatments and/or exclusions from coverage that are not "disability-based," including pre-existing conditions, are permissible under the EEOC regulations. For example, an employer may offer a health plan that provides fewer benefits for the treatment of "mental and nervous disorders" than is provided for the treatment of physical conditions. Other plans may limit the number of x-rays or dollar amounts on prescription drugs.

These broad distinctions that apply to the treatment of a multitude of dissimilar conditions and that constrain individuals both with and without disabilities, are not distinctions based on disability. Although such distinctions may have a greater impact on certain individuals with disabilities, they do not intentionally discriminate on the basis of disability and do not violate the ADA.

What About Pre-Existing Clauses?

Blanket pre-existing-condition clauses that exclude from coverage a condition that predates entering into the policy may not be used to deny an employee unrelated coverage. For example, an employee with an emotional disability may not be denied coverage for a broken leg. Universal limits or exclusions from coverage of all experimental drugs or of all "elective surgery" are likewise not insurance distinctions based on a disability. If the clause is applied equally to all insured employees, it does not violate the ADA. Pre-existing-condition clauses in an employer's health insurance plan may adversely affect people with disabilities, but such clauses are permissible if an employer is not using them as a means of avoiding the ADA.

What If The Insurance Plan Offered Began Prior To ADA?

The ADA does not provide a "safe harbor" for health-insurance plans adopted prior to its July 26, 1990 enactment. Challenged disability-based terms and provisions of both pre-and post-ADA health insurance plans will be scrutinized by the EEOC under the same subterfuge standards.

Does The ADA Affect The Application Of Actuarial Principles?

The ADA does not limit health and life insurance plans based on underwriting risks or classifying risks. An employer that treats individuals with disabilities differently under an insurance or benefit plan because the people who are disabled represent increased risks or costs is not in violation of the ADA if the employer treats the disabilities in the same manner as other conditions of the same risks/costs. Fair, unbiased application of actuarial principles in providing benefits is allowable under the ADA. The burden of proof rests with employers, since they have access to the risk assessment, actuarial, and claims data relied upon in adopting a disability-based distinction.

What About Coverage Of Dependents?

The coverage of an employee's dependents under an employer-provided health insurance plan is a benefit available to the employee by virtue of employment. Insurance terms, provisions, and conditions concerning dependent coverage are subject to the same ADA standards, including the application of disability-based distinctions.

Does The ADA Require Dependent Coverage To Be Identical To The Employee's Coverage?

The ADA does not require that the coverage offered dependents be the same in scope as the coverage accorded to employees. For example, it would not violate the ADA for a health insurance plan to cover prescription drugs for employees, but not to include such coverage for the employees' dependents. Nor does the ADA require that dependents be granted the same level of benefits as those granted to the employee. For example, it would not violate the ADA if a health insurance plan had a $100,000 benefit cap for employees, but only a $50,000 benefit cap for an employee's dependents.

Does The ADA Restrict Testing For Illegal Drug Use?

The ADA specifically permits testing for illegal drug use. Drug tests are not regarded as medical examinations for employment purposes. Companies may elect to apply these tests to applicants or employees. The ADA specifically acknowledges that certain occupations, such as those in the transportation industry, may require such testing to ensure the welfare of the public. The ADA does not recognize a person who actively abuses illegal substances as having a disability. Applicants or employees abusing illegal drugs are not protected by the ADA on the basis of the drug use. A company may impose penalties on these employees and not be charged with discrimination.

Where Can I Obtain Additional Information?

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President's Committee on Employment of People with Disabilities
(202) 376-6200 (VOICE), (202) 376-6205 (TTY/TTD),
(202) 376-6219 (FAX)

The information in this fact sheet came from the: Ideas to Solve Your ADA Problems, Centers on Education and Work, University of Wisconsin-Madison Alliances To Educate and Employ People with Disabilities, September, 1994; EEOC; and the President's Committee on Employment of People with Disabilities.

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Employment Checklist For Hiring Persons With Disabilities

Practical Suggestions

Do!

- **Do** learn where to find and recruit people with disabilities.
- **Do** learn how to communicate with people who have disabilities.
- **Do** ensure that your applications and other company forms do not ask disability-related questions and that they are in formats that are accessible to all persons with disabilities.
- **Do** consider having written job descriptions that identify the essential functions of the job.
- **Do** ensure that requirements for medical examinations comply with the Americans with Disabilities Act (ADA).
- **Do** relax and make the applicant feel comfortable.
- **Do** provide reasonable accommodations that the qualified applicant will need to compete for the job.
- **Do** treat an individual with a disability the same way you would treat any applicant or employee—with dignity and respect.
- **Do** know that among those protected by the ADA are qualified individuals who have AIDS, cancer, who are mentally retarded, traumatically brain injured, deaf, blind, and learning disabled.
- **Do** understand that access includes not only environmental access, but also making forms accessible to people with visual or cognitive disabilities and making alarms/signals accessible to people with hearing disabilities.
- **Do** develop procedures for maintaining and protecting confidential medical records.
- **Do** train supervisors on making reasonable accommodations.

Don't

- **Don't** assume that persons with disabilities are unemployable.
- **Don't** assume that persons with disabilities lack the necessary education and training for employment.
- **Don't** assume that persons with disabilities do not want to work.
- **Don't** assume that alcoholism and drug abuse are not real disabilities, or that recovering drug abusers are not covered by the ADA.
- **Don't** ask if a person has a disability during an employment interview.
- **Don't** assume that certain jobs are more suited to persons with disabilities.
- **Don't** hire a person with a disability if that person is a significant risk of substantial harm to the health or safety of the public and there is no reasonable accommodation to reduce the risk or the harm.
- **Don't** hire a person with a disability who is not qualified to perform the essential functions of the job even with a reasonable accommodation.
- **Don't** assume that you have to retain an unqualified employee with a disability.
- **Don't** assume that your current management will need special training to learn how to work with people with disabilities.
- **Don't** assume that the cost of accident insurance will increase as a result of hiring a person with a disability.
- **Don't** assume that the work environment will be unsafe if an employee has a disability.
- **Don't** assume that reasonable accommodations are expensive.
- **Don't** speculate or try to imagine how you would perform a specific job if you had the applicant's disability.
- **Don't** assume that you don't have any jobs that a person with a disability can do.
- **Don't** make medical judgements.
- **Don't** assume that a person with a disability can't do a job due to apparent and non-apparent disabilities.
- **Don't** assume that your workplace is accessible.

How Do I Know If My Worksite Is Accessible?

The following are some questions to keep in mind when determining physical accessibility:

- Are there designated parking spaces for persons with disabilities that are close to the entrance of the worksite?
- Is there a pathway without abrupt level changes or steps that leads from the parking area to the entrance?
- If ramps are used to provide access, are they appropriately graded and are handrails provided?
- Are the doors wide enough (36 inches) for people using wheelchairs? Are they easy to open (e.g., not excessively heavy, with easily grasped handles, or automatic)?
- Is the personnel office in an accessible location?
- Are pathways to the bathroom, water fountain, and public telephone accessible? Can people with disabilities use them?
- Are elevators accessible to all persons with disabilities (e.g., control panels lower than 54 inches from the floor, raised symbols or numbers on the control panels)?
- Is all signage appropriate and accessible for persons with visual, learning, and cognitive disabilities (including the use of symbols and graphics)?
- Does the emergency warning system include both audible and visual alarms?

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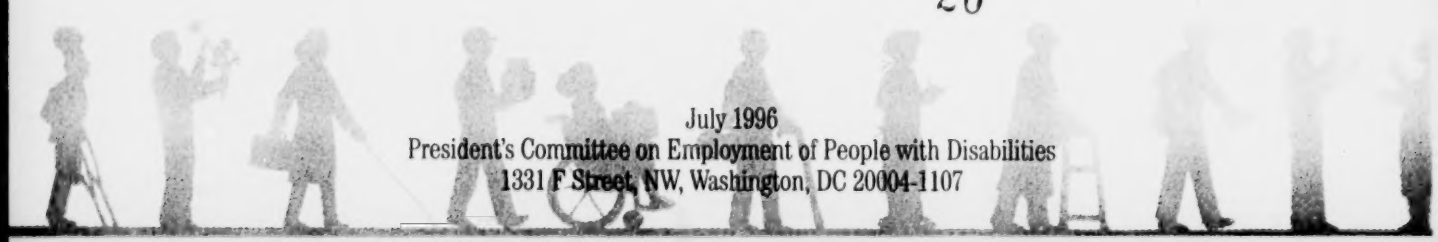
Access Board
(VOICE) (800) 872-2253, (202) 272-5449 or (800) 993-2822
(TTY/TTD), (202) 272-5447 (FAX)



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Pre-Employment Inquiries

Aside from the common courtesy due to anyone being interviewed, regardless of disability, the Americans with Disabilities Act (ADA) places some restrictions on the employer's pre-employment inquiries.

What Are The Restrictions On Pre-Employment Inquiries?

Questionnaires, applications, medical examinations, and tests are often used by employers to determine the competency of the applicant. Keep in mind that, at the pre-offer stage, disability-related questions and medical examinations are prohibited under the ADA.

How Can I Make Sure I Comply With The ADA Restrictions On Pre-Employment Inquiries?

Develop a thorough job description that identifies the essential elements of the job. By relying on this description, both the interviewer and applicant are aware of the essential elements of the job. Employers should also review old application forms to ensure that medical histories are not requested, since this is no longer appropriate.

How Should I Handle Pre-Employment Inquires During The Interview Process?

Make sure to ask only questions regarding the information on the individual's application form. You may ask the applicant what prior job duties he or she performed. Be careful not to ask applicants about visible physical characteristics or their health status. It is not legal to inquire if the applicant has a psychiatric disability, a history of having a psychiatric disability, or if he or she has consulted with a psychiatrist.

Nor may questions be asked about past drug addiction.

May I Conduct An Employment Physical?

The law permits a medical examination if the medical evaluation is conducted after an offer of employment has been made. However, if physicals are conducted, they must be conducted for all employees in that job category and the medical information gathered must be kept separate from the personnel file. Drug testing is not considered a "medical examination" under the law. Therefore, pre-employment tests for illegal drug use are permitted by the ADA.

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(EEOC has issued Final Guidance on Pre-employment Disability-Related Questions and Medical Examinations under the ADA, October 10, 1995)

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